

UNITED STATES OF AMERICA,) 3:13-cr-00002-HDM-VPC
)
Plaintiff,)
)
vs.) ORDER
)
FABIAN BARRAGAN LOMBERA,)
)
Defendant.)
)

Case History

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1 said he couldn't deliver 12 pounds, but that he could deliver 7
2 pounds of methamphetamine and would leave Fresno in the morning.
3 *Id.* at 4.

4 The next day, Lombera was arrested at a Chevron station just
5 outside of Reno, Nevada, after officers intercepted the vehicle he
6 was driving and found five individually wrapped packages of a
7 substance that field-tested positive for the presence of
8 methamphetamine. Laboratory analysis determined the packages
9 contained 2184 grams of actual methamphetamine. *Id.* at 5.

10 On July 24, 2013, Lombera pled guilty to possessing with
11 intent to distribute 500 grams or more of methamphetamine (#29). On
12 December 23, 2013, the court sentenced him to a term of 188 months'
13 imprisonment pursuant to a one-level downward variance from the 210
14 to 262 guideline range. RT Sentencing 19-22. Lombera did not file a
15 direct appeal.

16 The instant motion is Lombera's first claim for relief under
17 28 U.S.C. § 2255. He timely filed the motion on November 10, 2014,
18 #48, within one year after the court's entry of judgment on January
19 3, 2014 (#43).

20 **Legal Standard**

21 Pursuant to § 2255, a federal inmate may move to vacate, set
22 aside, or correct his sentence if: (1) the sentence was imposed in
23 violation of the Constitution or laws of the United States; (2) the
24 court was without jurisdiction to impose the sentence; (3) the
25 sentence was in excess of the maximum authorized by law; or (4) the
26 sentence is otherwise subject to collateral attack. *Id.* § 2255.

27 Ineffective assistance of counsel is a cognizable claim under
28 § 2255. *Bauman v. United States*, 692 F.2d 565, 581 (9th Cir. 1982).

1 In order to prevail on such a claim, the defendant must meet a two-
2 prong test to show both deficient performance of counsel and
3 resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687
4 (1984).

5 First, the defendant must show that his counsel's performance
6 fell below an objective standard of reasonableness. *Id.* at 687-88.
7 "The proper measure of attorney performance remains simply
8 reasonableness under prevailing professional norms." *Id.* at 688.
9 Additionally, in considering the conduct of defendant's counsel, a
10 court must be highly deferential. "Because of the difficulties
11 inherent in making the evaluation, a court must indulge a strong
12 presumption that counsel's conduct falls within the wide range of
13 reasonable professional assistance; that is, the defendant must
14 overcome the presumption that, under the circumstances, the
15 challenged action 'might be considered sound trial strategy.'" *Id.*
16 *Strickland* 466 U.S. at 689 (citing *Michel v. Louisiana*, 350 U.S.
17 91, 101, 76 S.Ct. 158, 164).

18 This presumption of reasonableness means the court must "give
19 the attorneys the benefit of the doubt," and must also
20 "affirmatively entertain the range of possible reasons counsel may
21 have had for proceeding as they did." *Cullen v. Pinholster*, 131
22 S.Ct. 1388, 1407 (2011) (internal quotation marks and alterations
23 omitted). Counsel is granted wide latitude in making tactical
24 decisions. *Strickland*, 466 U.S. at 689.

25 Second, if there was a deficiency in counsel's performance,
26 the defendant must show it prejudiced his defense. *Strickland*, 466
27 U.S. at 687. This requires demonstrating "a reasonable probability
28 that, but for counsel's unprofessional errors, the result of the

1 proceeding would have been different. A reasonable probability is a
2 probability sufficient to undermine confidence in the outcome.”
3 *Id.* at 694.

4 A court need not address both components of the inquiry if the
5 defendant makes an insufficient showing on one. *Strickland*, 466
6 U.S. at 697.

7 **Lombera’s Motion**

8 Lombera advances two grounds for relief in his motion:
9 defendant’s trial counsel was ineffective for (1) failing to seek
10 suppression of the evidence obtained by dog sniffs; and (2) failing
11 to seek suppression of all of the evidence seized without a valid
12 search warrant after defendant had been removed and secured.

13 Lombera states Supreme Court precedents support ground one and
14 Ninth Circuit and Supreme Court precedents support ground two. He
15 does not cite to or elaborate on these precedents.

16 **Analysis**

17 Although pro se pleadings are liberally construed, pro se
18 litigants are bound by the rules of procedure that govern other
19 litigants. *Ghazali v. Moran*, 46 F.3d 52 (9th Cir. 1995) (per
20 curiam) (citation omitted). Motions under § 2255 may be dismissed
21 if they are unduly vague or conclusory. See *Shah v. United States*,
22 878 F.2d 1156, 1161 (9th Cir. 1989) (vague or conclusory claims
23 without supporting factual allegations warrant summary dismissal of
24 § 2255 motion).

25 Lombera’s assertions are conclusory, with vague legal
26 authority, but sufficiently pled for the court to consider them on
27 their merits. The record reveals Lombera stated he was satisfied
28 with his counsel at the time of the entry of his plea, that he

1 understood the rights he was giving up by entering a guilty plea,
2 and that he nonetheless wished to plead guilty because he was
3 interested in a favorable plea bargain.

4 On the date of his change of plea, the following dialogue took
5 place:

6 THE COURT: Any defenses you may have had to this offense; for
7 example, a violation of your Constitutional rights in
8 connection with the search that was conducted, statements that
9 you made, if they were made in violation of your
10 Constitutional rights, you can't raise those at a later time
11 if you enter a plea of guilty. Do you understand that?
12 DEFENDANT LOMBERA: Yes, sir.

13 #54 at 6:18-25 (emphasis added). Earlier, Lombera had
14 acknowledged he was satisfied with his representation by his
15 attorney, Cheryl Field-Lang.

16 THE COURT: Have you been able to converse with Ms. Field-Lang?
17 DEFENDANT LOMBERA: Yes, sir.
18 THE COURT: And are you satisfied with her representation of
19 you?
20 DEFENDANT LOMBERA: Yes, sir.
21 THE COURT: Has she failed do [sic] anything you wanted her to
22 do on your behalf?
23 DEFENDANT LOMBERA: No, sir.

24 *Id.* at 2:23-3:6. Lombera's counsel asserts she discussed with
25 Lombera possible defenses and defense motions, including
26 specifically the dog sniff and vehicle search (#57, Declaration of
27 Cheryl Field-Lang, ¶6). She advised him, based on her research, the
28 facts and the evidence, that he was unlikely to prevail on those
29 motions. *Id.* Lombera has provided no evidence or argument to
30 dispute this conclusion. "[S]trategic choices [by counsel] made
31 after thorough investigation of law and facts relevant to plausible
32 options are virtually unchallengeable." *Strickland*, 466 U.S. at
33 689-90.

34 The record shows not only that Lombera was aware of the option

1 to seek to suppress evidence obtained through dog sniffs and the
2 vehicle search, but also that he and his counsel specifically
3 discussed the viability of such defenses and determined a plea
4 bargain was in his best interest. In fact, Lombera "indicated what
5 he wanted was the 'best deal' [his counsel] could get for him in
6 exchange for a guilty plea; Lombera thereafter knowingly and
7 voluntarily entered into plea negotiations[.]" (#57, Declaration of
8 Cheryl Field-Lang, ¶7)

9 Lombera has provided no evidence, legal citations, or analysis
10 sufficient to conclude his counsel's performance was deficient and
11 fell below an objectively reasonable standard. Moreover, he has
12 provided no evidence, legal citations, or analysis sufficient to
13 conclude that had such a deficiency existed, it would have
14 prejudiced his defense.

15 **Conclusion**

16 In light of the record, the court finds Lombera has failed to
17 demonstrate ineffective assistance of counsel under the standard
18 set in *Strickland v. Washington*. Accordingly, and based on the
19 foregoing, defendant Fabian Barragan Lombera's motion under 28
20 U.S.C. § 2255 to vacate, set aside, or correct sentence by a person
21 in federal custody (#48) is **DENIED**.

22 IT IS SO ORDERED.

23 DATED: This 27th day of April, 2015.

24 
25 UNITED STATES DISTRICT JUDGE
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